Severance Tax Credit Study Group Meeting
Tuesday July 15, 1:00 pm
CCI Conference Room
800 Grant Street, Suite 500

PARTICIPANTS

Jamee Allen, Freeport MacMoran	Susan Kirkpatrick, DOLA
Rich Atkinson, Rio Tinto	Stephen Loshbaugh, Meeker
Kevin Bommer, CML	Carl Miller, Leadville (by telephone)
Mike Braaten, City of Rifle	Ken Parsons, CCI/Rio Blanco County
Justin Clifton, EIAAC (by telephone)	Linda Rice, DOLA
Steve Colby, DOLA	Keela Steele Riker, DOLA
Stan Dempsey, Colorado Petroleum Assoc.	Pam Roth, Williams
Aron Diaz, AGNC	Rebecca Swanson, Governor's Policy Office
Becky Dorward, DOLA	Cynthia Thayer, DOLA
Bruce Eisenhauer, DOLA	Heidi Van Huysen. DNR
Stephen Flaherty, NBL	Esther Van Mourik, Legislative Legal Services
Tony Hernandez, DLG	Garin Vorthmann, COGA
Todd Herreid, Economist, Leg. Committee	Kirk Weber, CDE
Doug Houston, GK Baum	Tim Weber, EIAAC (by telephone)

Susan Kirkpatrick called the meeting to order at 1:00 pm. Introductions were made all around.

Introductory Remarks:
Susan Kirkpatrick began the study group with a general statement about the purpose of the study group and the ultimate goal to bring a recommendation regarding options for the Severance Tax Credit to the legislature in January 2009. Director Kirkpatrick emphasized that the study group is comprised of participants (as opposed to committee members) and is inclusionary, noting that all can fully participate and all proceedings and documents are available for public consumption. Participants are encouraged to share thoughts, information and materials.

Regarding the subject matter, Director Kirkpatrick commented on the richness of the content we will be discussing and the myriad of perspectives represented at the table.

Current Statute:
An overview of the Severance Tax Credit was provided, including the history, purpose, process and policy of the statute (please reference handout). To summarize, the state severance tax statute (CRS 39-29-107.5) established in 1980, provides for a credit against severance tax liability for contributions to public facilities made by severance taxpayers with new or expanded production. The purpose of this credit is to:

- Provide risk sharing in the "front-end finance" of local government facilities required to support significant impacts from expansion of mineral production;

- Build a partnership between the mineral producers and local governments for the development of adequate public facilities to accommodate the socio-economic effects of the mineral industry;
- Provide the state a means to review such credits to assure that the use of funds is appropriate to the intentions of the statute; and
- Return to the Severance Tax Trust Fund those monies "borrowed" in the exercise of approved severance tax credits.

The Severance Tax Credit process consists of four steps: application, (90 day) review and approval, taxpayer claim, and repayment. Policy was discussed as well. Other considerations highlighted and discussed include:

- Tax credit agreements are ultimately submitted to Department of Revenue (DOR), after which point there is no way to track whether or not those agreements are honored.
- Use of the Tax Credit impacts both DNR Trust Fund and DOLA grants program.
- Producer utilizing the Tax Credit *estimates* tax liability over the next decade and can contribute 50% of that estimated figure.
- Primarily used for coal in the past, oil & gas is now the hot ticket and is much more complex in terms of corporate structure. How can we utilize this statute in different industries?
- Taxpayer is often a corporate entity.

Context for Change:

Next, the context for change was discussed, including budget issues, TABOR “net revenue gain” constraints, changes to Severance taxpayers, the scale of local government financing needed, and other options for new IMPACT Assistance Grant/Loans.

At the time of the act and use of the credits the Trust Fund was more like a savings account so the temporary loss of funds had less impact. Now that DNR and other programs are dependent on Trust Fund revenue for operating, loss of revenue has become an issue. The credit worked well for impacts of mining because mining is comparatively stable in a location with long-term employees resident within communities.

The oil and gas industry, with its complex corporate structure, has found the credit agreement process hard to implement.

Local government planning and prioritization is key to successful utilization of the severance tax credit. Difficulties may be encountered when multiple local governments and corporate parties are required to reach agreement about a large severance tax credit.

Todd Herreid of Legislative Committee gave an overview of state severance tax forecasting and its role in TABOR (please refer to handout). Of note:

- Severance tax revenues collections increased from $32 million to $234 million in the time period 2003-2006.
- Dramatic fluctuations have reigned recently due to the mainly upward swing of gas prices.
- Natural gas prices are forecasted to be volatile and a sustained upward trend is predicted resulting in significant increases in state severance revenue.

- We are entering a new era in energy prices—price trend acceleration expected to continue.
- At 3% of state TABOR revenue, the severance tax was a significant factor in the post-Referendum C calculations.
- Legislative Council asks to be notified of any significant severance tax credits approved.

Esther van Mourik, Office of Legislative Legal Services, gave a presentation on TABOR constraints on statutory change in taxes, focusing on the "net revenue gain" phrase in the amendment (please reference handout). The Attorney General's office approved a package "scheme" of statutory tax changes that had positive and negative revenue impacts that netted to zero. The initial ruling on "net revenue change" occurred in the fiscal note analysis by legislative council staff. In the end, any proposal could be challenged in court. Legislative Council staff asks to be informed of proposed statutory changes as early as possible so that review can occur before the rush of legislation prior to a session.

With regard to what impact, TABOR-wise, a severance tax credit "contribution" will have on a local government, Legislative Council advised that the contribution would be considered a "gift, grant, donation" that is exempt from TABOR *[Please note: In a subsequent phone call, Ms. Van Mourik revised this advisement indicating that a severance tax credit contribution would be "revenue" constrained by TABOR]*. TABOR repercussions to the state by the severance tax credit are the main focus of the presentation today. Severance tax is TABOR revenue for purposes of our discussion.

Options for Change:
Recommendation options to propose to the Legislature might include:

- Use the DOLA "Tier III" grant/loan program for large local government projects.
- Use the existing statute without new legislation and increase promotion and marketing of the option
- Modernize the current statute with modest changes.
- Major modifications to the current statute.
- Create a new severance tax credit statute.
- Establish new finance options for large local government projects.

Looking Ahead:
Mike Bester, Golden City Manager, Sharon Day, Meeker City Manager, and participants from Chevron will be asked to present to the group. Local government and industry perspectives on severance tax credits will be presented in upcoming meetings, and then the group will develop recommendations for changes to the severance tax credit.

Meeting adjourned at 3:16 pm

Next meeting: Thursday August 14
1:00 – 3:30 pm

Minutes taken by Keela Steele Riker